



February 20, 2004

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## ENGROSSED SENATE BILL No. 4

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DIGEST OF SB 4 (Updated February 19, 2004 12:00 pm - DI 84)

**Citations Affected:** IC 5-22.

**Synopsis:** Award of state contracts. Requires the state's procurement practices to be supportive of retention and creation of jobs in Indiana. Provides that a contract or solicitation for a contract to privatize any of the functions performed by a governmental body's employees that would result in the layoff or dismissal of any of those employees must: (1) require an offeror to provide verifiable evidence that the cost of the contract will be less than the cost of having the functions performed by the governmental body's employees; (2) specify that the governmental body may not pay the contractor more than the cost the governmental body determined the governmental body would incur to perform the functions using its own employees; (3) require the governmental body to provide to an offeror an estimate of the cost of having the functions performed by the governmental body's employees; and (4) contain a statement that the governmental body may pursue certain remedies if the contractor fails to comply with the contract. Permits a representative of any group of the governmental body's employees to submit an offer for the group to perform the functions and requires the governmental body to award the contract to the group of employees under certain circumstances. Excludes from these requirements purchases from qualified nonprofit agencies for persons with severe disabilities.

**Effective:** July 1, 2004.

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### Drozda, Antich

(HOUSE SPONSORS — STILWELL, DVORAK)

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November 18, 2003, read first time and referred to Committee on Economic Development and Technology.

January 13, 2004, amended, reported favorably — Do Pass.

January 27, 2004, read second time, amended, ordered engrossed.

January 28, 2004, engrossed.

February 2, 2004, read third time, passed. Yeas 39, nays 10.

#### HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Appointments and Claims.

February 19, 2004, amended, reported — Do Pass.

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ES 4—LS 6067/DI 75+



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February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 4

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A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-22-3-6.9 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2004]: **Sec. 6.9. The state's procurement practices must be**  
4 **supportive of retention and creation of jobs in Indiana.**

5 SECTION 2. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2004]: **Sec. 7. (a) This section applies to a solicitation for a**  
8 **contract that would require the contractor to perform any of a**  
9 **governmental body's functions that are performed at the time of**  
10 **the solicitation by the governmental body's employees.**

11 **(b) A representative of any group of the governmental body's**  
12 **employees may submit, in response to a solicitation described in**  
13 **subsection (a), an offer for the group of employees to perform the**  
14 **functions that are the subject of the solicitation.**

15 **(c) The governmental body shall award the contract to the**  
16 **group of employees if this article would otherwise require the**  
17 **contract to be awarded to a person that submitted the group's**

ES 4—LS 6067/DI 75+



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offer.

SECTION 3. IC 5-22-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) This section applies to a solicitation for a contract that would require the contractor to perform any of a governmental body's functions that:

- (1) are performed at the time of the solicitation by the governmental body's employees; and
- (2) would result in the layoff or dismissal of any of the governmental body's employees.

This section does not apply to a purchase under IC 5-22-13.

(b) A solicitation described in subsection (a) must include the following:

- (1) An estimate of the cost the governmental body would incur in performing the functions covered by the contract with the governmental body's employees during the period comprising the term of the proposed contract. The estimate must include labor, overhead, administrative, equipment, supply, and any other costs.

- (2) A requirement that the offeror must provide objective, verifiable evidence that:

- (A) is satisfactory to the governmental body; and
- (B) demonstrates that if the offeror is awarded the contract, the cost of the contract over the term of the contract will be less than the amount described in subdivision (1).

- (3) A statement that the contract between the governmental body and the offeror must contain a provision that the governmental body may not pay to the offeror, over the term of the contract, more than the amount described in subdivision (1).

- (4) A statement that the contract between the governmental body and the offeror may provide for the deposit of surety bonds, the making of good faith deposits, liquidated damages, the right of reversion or repurchase, or other rights and remedies if the offeror fails to comply with the contract.

SECTION 4. IC 5-22-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Supplies and services purchased under this chapter must:

- (1) meet the specifications and needs of the purchasing governmental body; and
- (2) be purchased at a fair market price.

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(b) Supplies and services purchased under this chapter are not subject to IC 5-22-5-9.

SECTION 5. IC 5-22-16-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) This section applies to a solicitation for a contract that would require the contractor to perform any of a governmental body's functions that:

(1) are performed at the time of the solicitation by the governmental body's employees; and

(2) would result in the layoff or dismissal of any of the governmental body's employees.

This section does not apply to a purchase under IC 5-22-13.

(b) An offeror may not be considered responsive to a solicitation described in subsection (a) if the offeror does not provide objective, verifiable evidence that:

(1) is satisfactory to the governmental body; and

(2) demonstrates that, if the offeror is awarded the contract, the cost of the contract over the term of the contract will be less than the cost the governmental body estimates the governmental body would incur in performing the functions covered by the contract with the governmental body's employees during the period comprising the term of the proposed contract.

SECTION 6. IC 5-22-17-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) This section applies to a contract that would require the contractor to perform any of a governmental body's functions that:

(1) are performed at the time of the solicitation for the contract by the governmental body's employees; and

(2) would result in the layoff or dismissal of any of the governmental body's employees.

This section does not apply to a purchase under IC 5-22-13.

(b) A contract referred to in subsection (a) must contain the statement described in IC 5-22-5-9(b)(3).

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SENATE MOTION

Madam President: I move that Senator Antich be added as second author of Senate Bill 4.

DROZDA

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## COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 4, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "specify that only:" and insert "**require both of the following:**

**(1) All individuals employed in the performance of the contract must provide both of the following to the contracting agency:**

**(A) A copy of the individual's valid Social Security card showing the individual's Social Security number.**

**(B) A background check that verifies that the Social Security number provided under clause (A) is in fact the individual's valid Social Security number.**

**(2) All work done under the contract must be performed in the United States."**

Page 1, delete lines 5 through 8.

and when so amended that said bill do pass.

(Reference is to SB 4 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 5, Nays 1.

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## SENATE MOTION

Madam President: I move that Senate Bill 4 be amended to read as follows:

Page 1, line 3, after "15." insert **"(a) This section does not apply to either of the following:**

**(1) A contract for supplies.**

**(2) A contract entered into before July 1, 2004.**

**(b)".**

Page 1, delete lines 5 through 12, begin a new line block indented and insert:

**"(1) The contractor must file with the contracting agency an affidavit affirming under the penalties for perjury that the contractor has in its files an employment eligibility verification form required by the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324a) for each individual that will be employed in the performance of the contract. The contractor must file a new affidavit with the contracting agency any time the contractor assigns an employee who has not previously worked under the contract to work under the contract."**

Page 1, after line 14, begin a new paragraph and insert:

**"(c) The Indiana department of administration shall adopt rules under IC 4-22-2 to implement this section. A state agency may not enter into a contract for services before the department adopts the rules required by this subsection.**

**(d) The attorney general may not approve a contract for services if an affidavit required by subsection (b)(1) is not included as part of the contract documents.**

**SECTION 2. [EFFECTIVE JUNE 30, 2004] (a) The definitions in IC 5-22-2 apply throughout this SECTION.**

**(b) Notwithstanding IC 5-22-17-15(c), as added by this act, the Indiana department of administration shall implement IC 5-22-17-15, as added by this act, under interim written guidelines approved by the commissioner of the Indiana department of administration. A state agency may not enter into a contract for services until the commissioner approves interim written guidelines under this subsection.**

**(c) This SECTION expires on the earlier of the following:**

**(1) The date rules required by IC 5-22-17-15, as added by this act, are adopted under IC 4-22-2.**

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**(2) July 1, 2006."**

(Reference is to SB 4 as printed January 14, 2004.)

DROZDA

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred Senate Bill 4, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 4 as reprinted January 28, 2004.)

HARRIS, Chair

Committee Vote: yeas 10, nays 0.

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**Y**

